



**City of Rushville**  
**Fire/Rescue Department**  
*Charles R. Jenkins, Chief*  
*Wayne A. Munson, Assistant Chief*

# **Proposed Findings**

# **Of**

# **Facts**

**120 North Perkins Street, Rushville, Indiana 46173**  
**Telephone 765-932-3065 Fax 765-938-1406**  
**[www.cityofrushville.in.gov](http://www.cityofrushville.in.gov)**



December 22, 2016

Chuck Jenkins  
City of Rushville  
133 West First St.  
Rushville, IN 46173



Re: Flynn Livestock Building – 301 East 2<sup>nd</sup> Street, Rushville, IN Structural Assessment  
TLF Project No. 2016-537

Dear Mr. Jenkins:

TLF, Inc. has completed the above referenced project and is pleased to present the following letter as a result of the assessment.

Project Description:

TLF was requested to complete a structural inspection of the Flynn Livestock Building and assemble a report documenting the structural deficiencies and if the building is safe to occupy. The inspection was completed on 12/21/16 at 10:00am. All observations made were visual in nature. No snow was currently present on the roof during the inspection.

Building Description:

The Flynn Livestock Building was thought to be built in the 1940's per the current owner. No drawings of the existing building were available. The single story building consists of exterior masonry bearing walls with interior wood columns and a dirt floor. The roof structure consists of wood framing, wood decking and metal roofing. A high roof runs the full length of the building and a low roof is present on the east and west sides of the high roof.

General Observations:

1. **Perimeter Wall Cracking:** Vertical and diagonal cracks were found on numerous locations throughout the perimeter masonry bearing walls. Some of the cracking may be attributed to expansion and contraction of the structure along with inadequate control joints. Some of these cracks have most likely been present for a long time. However, an upper wall section on the west side has moved out-of-plane (Image 1). A plate and wire assembly has been installed to hold the wall in place (Image 2). Some of the interior columns are deflecting laterally and have rotted out bases (see Item 3). With this loss of interior support, the roof structure is pushing the masonry walls outward (out-of-plane).
2. **East Side Low Roof:** Significant damage of the wood roof deck was observed (Image 3). Numerous openings were found in the deck with significant damage to the wood support framing (Image 4). This was most likely caused by rotting wood. Excessive deflection of the deck and framing was also noted along with most of the metal roofing being loose or missing.
3. **Interior Wood Columns:** Most of the interior wood columns are significantly out of plumb (Image 5). In some locations the columns are out-of-plumb by up to 6" and are separating from the top girders. Most concerning is that several of the column bases have completely rotted away from the



3901 W 86 <sup>th</sup> Street Suite 200	Indianapolis, IN 46268	317-334-1500
6401 Constitution Drive	Fort Wayne, IN 46804	260-444-4701

ground and therefore provide no vertical load path to support the roof structure (Image 6). This will cause other framing members to receive additional load beyond their intended design and may overstress these members.

4. **High Roof:** The high roof and short wall section above the low roof exhibit a wave like pattern as observed from the outside (Image 3). Significant deflection was observed on the girders that span between the interior columns causing the midspan portion of the roof to sag. This may be attributed to wood rot or load redistribution from the unattached column bases.
5. **Wood Framing Members:** One of the bottom chord members in a roof truss has completely broken away from the girder connection (Image 7). Additionally, numerous members throughout the building have significant deflection and may be overstressed. The bowed columns have caused numerous secondary framing members to become bent and distorted.

Representative Photos:



Image 1



Image 2



Image 3



Image 4



Image 5



Image 6



Image 7

Summary:

**The building in its current condition is not safe to occupy.** A significant snow event/drift or wind event may result in further damage or possible collapse of the roof structure based on the current state of the building. Damaged/loose metal roofing on the east side low roof may also blow off and become airborne to the surrounding public. Repair and/or replacement to all of the above listed items are required before the building may be considered safe to occupy. A licensed Professional Engineer shall be contacted to design the appropriate repairs.

This report represents items that were visually observed during the walkthrough. Hidden damage or defects were not part of this investigation. If there are any questions please do not hesitate to contact us.

Sincerely,  
TLF, Inc.



Devin M. Cook, P.E.  
Senior Project Engineer

\\\\tlfnas\\Projects\\2016\\500\\2016-537\\Admin\\Reports\\Flynn Livestock Building Structural Assessment 12-22-16.doc





**City of Rushville**  
**Fire/Rescue Department**  
*Charles R. Jenkins, Chief*  
*Wayne A. Munson, Assistant Chief*

# **Service/Publication**

**120 North Perkins Street, Rushville, Indiana 46173**  
**Telephone 765-932-3065 Fax 765-938-1406**  
**[www.cityofrushville.in.gov](http://www.cityofrushville.in.gov)**

7011 1570 0002 9191 5164

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<b>CERTIFIED MAIL™ RECEIPT</b>	
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For delivery information visit our website at <a href="http://www.usps.com">www.usps.com</a>	
OFFICIAL USE	
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Total Postage & Fees	\$ 6.47

Dropped in the Mail  
Postmark Here  
PM on 1/4/17

Sent To	Allen and Kathy Flynn H&W
Street, Apt. No., or PO Box No.	1695 East County Road 400 South
City, State, ZIP+4	New Castle, Indiana 47362

PS Form 3800, August 2006 See Reverse for Instructions

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"> <li>Complete items 1, 2, and 3.</li> <li>Print your name and address on the reverse so that we can return the card to you.</li> <li>Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul>	<p>A. Signature  <input checked="" type="checkbox"/> <i>Allen Flynn</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name)</p> <p>C. Date of Delivery</p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes          If YES, enter delivery address below: <input type="checkbox"/> No</p>
<p>1. Article Addressed to:</p> <p>Allen and Kathy Flynn H&amp;W          1695 East County Road 400 South          New Castle, Indiana 47362</p> <p>9590 9403 0481 5173 6805 76</p>	<p>3. Service Type</p> <p><input type="checkbox"/> Adult Signature <input type="checkbox"/> Priority Mail Express®  <input type="checkbox"/> Adult Signature Restricted Delivery <input checked="" type="checkbox"/> Registered Mail™  <input type="checkbox"/> Certified Mail® <input type="checkbox"/> Registered Mail Restricted Delivery  <input type="checkbox"/> Certified Mail Restricted Delivery <input type="checkbox"/> Return Receipt for Merchandise  <input type="checkbox"/> Collect on Delivery <input type="checkbox"/> Signature Confirmation™  <input type="checkbox"/> Collect on Delivery Restricted Delivery <input type="checkbox"/> Signature Confirmation Restricted Delivery</p> <p>4. Restricted Delivery</p>
<p>2. Article Number (Transfer from service label)</p> <p>7011 1570 0002 9191 5164</p>	

PS Form 3811, April 2015 PSN 7530-02-000-9053 Domestic Return Receipt

Notice Sent on 1-4-2017

Signed for on 1-4-2017

7011 1570 0002 9191 5133

**U.S. Postal Service™**  
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Postmark Here

Send To:  
 Allen and Kathy Flynn H&W  
 1695 East County Road 400 South  
 New Castle, Indiana 47362

PS Form 3800, August 2006 See Reverse for Instructions

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
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PS Form 3811, April 2015 PSN 7530-02-000-9053

Notice Sent on 12-6-2016

Signed for on 12-12-2016



**City of Rushville**  
**Fire/Rescue Department**  
*Charles R. Jenkins, Chief*  
*Wayne A. Munson, Assistant Chief*

# **TITLE WORK**

**120 North Perkins Street, Rushville, Indiana 46173**  
**Telephone 765-932-3065 Fax 765-938-1406**  
**[www.cityofrushville.in.gov](http://www.cityofrushville.in.gov)**

**UPDATED RECORD SEARCH CASE NO.: 201608-12**

**FOR:** City of Rushville  
Attn: Chuck Jenkins

**PROPERTY ADDRESS:** 301 E 2nd St  
Rushville, IN 46173



**RECORD OWNER:** R. Allen Flynn and Kathy J. Flynn, Husband and Wife

On the following Real Estate:

Sixty-two (62) feet off of the entire west ends of Lots One Hundred Ten (110) and One Hundred Eleven (111) in the Original Plat of Rushville, Indiana.

ALSO, Lots Number One Hundred Twenty (120) and One Hundred Twenty-one (121) in the Original Plat of Rushville, Indiana.

Shows:

**MORTGAGES:**

None Unreleased

**OTHER:**

Warranty Deed from Eric Adkins and Joe Barkdull, as Tenants in Common, to R. Allen Flynn and Kathy J. Flynn, husband and wife, dated December 29, 2010 and recorded December 29, 2010 in Book 38 pages 1583-1584 as Instrument #201000002878, in the Office of the Recorder of Rush County, Indiana.

We have made a Judgment Search over the past ten (10) years on R. Allen Flynn and Kathy J. Flynn, as husband and wife and not individually, and we found: None of Record.

**TAXES:**

Taxes for the year 2015, due and payable in 2016, each half in the amount of \$429.00, May installment Paid, November installment Paid, Taxing Unit: Rushville City ; Duplicate #70-11-05-159-001.000-011, Assessed Value: Land \$25,200.00, Improvements \$3,400.00, Exemptions \$ 0.

Taxes for the year 2015, due and payable in 2016, each half in the amount of \$295.50, May installment Paid, November installment Paid, Taxing Unit: Rushville City ; Duplicate #70-11-05-156-001.000-011, Assessed Value: Land \$12,700.00, Improvements \$7,000.00, Exemptions \$ 0.

TAXES FOR THE YEAR 2016, PAYABLE IN 2017, A LIEN, AMOUNT UNKNOWN.

COVERING A PERIOD FROM AUGUST 1, 2016 AT 8:00 AM TO THIS THE 9<sup>TH</sup> DAY OF JANUARY, 2017 AT 8:00 AM.

## TITLE SEARCH

### CERTIFICATE

**Rush County Abstract, LLC** hereby certifies that the foregoing is a full and correct Title Search of and the encumbrances upon the land described in the attached instrument as appears from the records of **Rush County, Indiana**, to-wit:

The records now in the office of the Recorder, the Probate Records, the General Judgment Docket, the Civil Suit Dockets, the Delinquent Personal Property Tax Judgment Docket, and Lis Pendens Record of the Clerk's Office, the record of Tax Sale and Affidavits on file in the Auditor's Office and the Real Estate Tax Duplicates of the Treasurer's Office in the County of **Rush County, Indiana**.

Search has been made of the records in the office of the Recorder, which search discloses no financing statement as required by the Uniform Commercial Code, with respect to any security interest in crops or in fixtures containing an adequate legal description of the real estate herein.

Liability insured herein is limited to a maximum amount of \$5,000.00.

CERTIFICATE NO. 201608-12

**Rush County Abstract, LLC**  
111 West 3rd Street  
Rushville, Indiana 46173

BY Rebecca J. Garner  
Rebecca J. Garner

**RECORD SEARCH CASE NO.: 201608-12**

**FOR:** **City of Rushville**  
Attn: Chuck Jenkins

**PROPERTY ADDRESS:** **301 E 2nd St**  
**Rushville, IN 46173**

**RECORD OWNER:** **R. Allen Flynn and Kathy J. Flynn, Husband and Wife**

On the following Real Estate:

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Shows:

**MORTGAGES:**

None Unreleased

**OTHER:**

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TAXES FOR THE YEAR 2016, PAYABLE IN 2017, A LIEN, AMOUNT UNKNOWN.

COVERING A PERIOD FROM DECEMBER 29, 2010 AT 12:18 PM TO THIS THE 1<sup>ST</sup> DAY OF AUGUST, 2016 AT 8:00 AM.

## TITLE SEARCH

### CERTIFICATE

**Rush County Abstract, LLC** hereby certifies that the foregoing is a full and correct Title Search of and the encumbrances upon the land described in the attached instrument as appears from the records of **Rush County, Indiana**, to-wit:

The records now in the office of the Recorder, the Probate Records, the General Judgment Docket, the Civil Suit Dockets, the Delinquent Personal Property Tax Judgment Docket, and Lis Pendens Record of the Clerk's Office, the record of Tax Sale and Affidavits on file in the Auditor's Office and the Real Estate Tax Duplicates of the Treasurer's Office in the County of **Rush County, Indiana**.


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Liability insured herein is limited to a maximum amount of \$5,000.00.

CERTIFICATE NO. **201608-12**

**Rush County Abstract, LLC**  
**111 West 3rd Street**  
**Rushville, Indiana 46173**

BY

  
Rebecca J. Garner

00002878  
Filed for Record in  
RUSH COUNTY, INDIANA  
SALLY NIEDENTHAL, RECORDER  
12-29-2010 At 12:18 pm.  
WARR DEED 18.00  
OR Book 38 Page 1583 - 1584  
Instrument Book Page  
201000002878 OR 38 1583

WARRANTY DEED

THIS INDENTURE WITNESSETH, That ERIC ADKINS and JOE BARKDULL, as Tenants in Common, of Rush County, in the State of Indiana, CONVEY AND WARRANT to R. ALLEN FLYNN and KATHY J. FLYNN, husband and wife, of Henry County, in the State of Indiana, for and in consideration of the sum of ONE DOLLAR (\$1.00) and other valuable consideration, the receipt whereof is hereby acknowledged, the following described Real Estate in Rush County, in the State of Indiana, to-wit:

Sixty-two (62) feet off of the entire west ends of Lots One Hundred Ten (110) and One Hundred Eleven (111) in the Original Plat of Rushville, Indiana.

ALSO, Lots Number One Hundred Twenty (120) and One Hundred Twenty-one (121) in the Original Plat of Rushville, Indiana.

Subject to all highways, easements and rights-of-way.

Parcel Numbers 70-11-05-156-001.000-011  
70-11-05-159-001.000-011

Subject to taxes due and payable in May 2011 and thereafter.

SEND TAX STATEMENTS TO: 1695 E 400S  
New Castle IN 47365

IN WITNESS WHEREOF, The said ERIC ADKINS and JOE BARKDULL have hereunto set their hands and seals this 29th day of December, 2010.

Eric Adkins (Seal)  
Eric Adkins

Joe Barkdull (Seal)  
Joe Barkdull

DULY ENTERED FOR RECORD  
SUBJECT TO FULL ADJUSTMENT  
FOR TRANSFER  
Deborah Adams  
AUDITOR RUSH COUNTY  
DATE 12-29-10

Page 2  
WARRANTY DEED  
Adkins & Barkdull - Flynn

STATE OF INDIANA, RUSH COUNTY, SS:

Before me, the undersigned, a Notary Public in and for said County, this 29th day of December, 2010, came Eric Adkins and Joe Barkdull, and acknowledged the execution of the foregoing instrument.

Witness my hand and official seal.

My Commission Expires:

2-24-2015

Rebecca J. Garner  
Notary Public  
Printed: Rebecca J. Garner  
Residing in Rush County, Indiana



THIS INSTRUMENT PREPARED BY RICHARD K. LEVI, ATTORNEY AT LAW.

I affirm, under the penalties of perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law.

Richard K. Levi  
Attorney



**City of Rushville**  
**Fire/Rescue Department**  
*Charles R. Jenkins, Chief*  
*Wayne A. Munson, Assistant Chief*

# **ORDER/NOTICE**

# **TIMELINE AND PICTURES**

**120 North Perkins Street, Rushville, Indiana 46173**  
**Telephone 765-932-3065 Fax 765-938-1406**  
**[www.cityofrushville.in.gov](http://www.cityofrushville.in.gov)**



**City of Rushville**  
**Fire/Rescue Department**  
**Charles R. Jenkins, Chief**  
**Wayne A. Munson, Assistant Chief**

February 3, 2017

**Timeline**

<i>Entry Date</i>	<i>Entered By</i>	<i>Action Date</i>	<i>Note</i>
02/03/2017 11:28:32 AM	Jenkins, Chuck	02/03/2017	Received a letter from the owner's lawyer (McNeely Stephenson - Brady J Rife) on January 23, 2017. I contacted the city attorney to let him know of the letter.
01/23/2017 08:00:43 AM	Jenkins, Chuck	01/23/2017	Received the green card from Certified Mail on this date. It was signed for on January 10, 2017.
01/04/2017 09:56:09 AM	Jenkins, Chuck	01/04/2017	USHB met last night and I handed out the assessment report. After some discussion I was advised to set a hearing date for the removal of the structure do to the assessment of the structure being unsafe.
12/28/2016 09:50:23 AM	Jenkins, Chuck	12/28/2016	Assessment done on December 21, 2016. The owner was present but after meeting the engineer stayed in his vehicle. I have received the report and provide that report to the USHB at the first meeting in January.
12/05/2016 12:01:31 PM	Jenkins, Chuck	12/05/2016	I will send notice for December 21, 2016 at 10:00 am
12/05/2016 09:20:50 AM	Jenkins, Chuck	12/05/2016	Due to the lack of time before notification, I am trying to reset the date for this assessment.
11/17/2016 11:25:42 AM	Jenkins, Chuck	11/17/2016	Will do assessment on December 14, 2016
11/02/2016 11:25:39 AM	Jenkins, Chuck	11/02/2016	Will send letter to our City Attorney so they can forward to the Flynn's about a date for a structural engineer to do an assessment.
10/24/2016 10:19:11 AM	Jenkins, Chuck	10/24/2016	Waiting on city attorney to email owners attorney.
10/03/2016 01:42:50 PM	Jenkins, Chuck	10/03/2016	Met with the owner Mr. Allen Flynn to do a walk through of the building so I could assess the structure for the safety . The structure is open and would be able to be accessed by the general public very easily. Pictures were taken of the inside of the building. Mr. Flynn explained that he would like to place storage units on the lot and that his wife was wanting senior living apartments. I told him I wasn't sure if zoning would allow the apartments or if the contamination would stop him. He claims that the floor is concrete and to be honest I am not sure. There are places where the concrete is evident and other places where there is too much material to know. A large portion of the east roof (single story) is open and allowing weather to enter the structure. I found some other areas of concern with large cracks in the North exterior wall and at the corner of

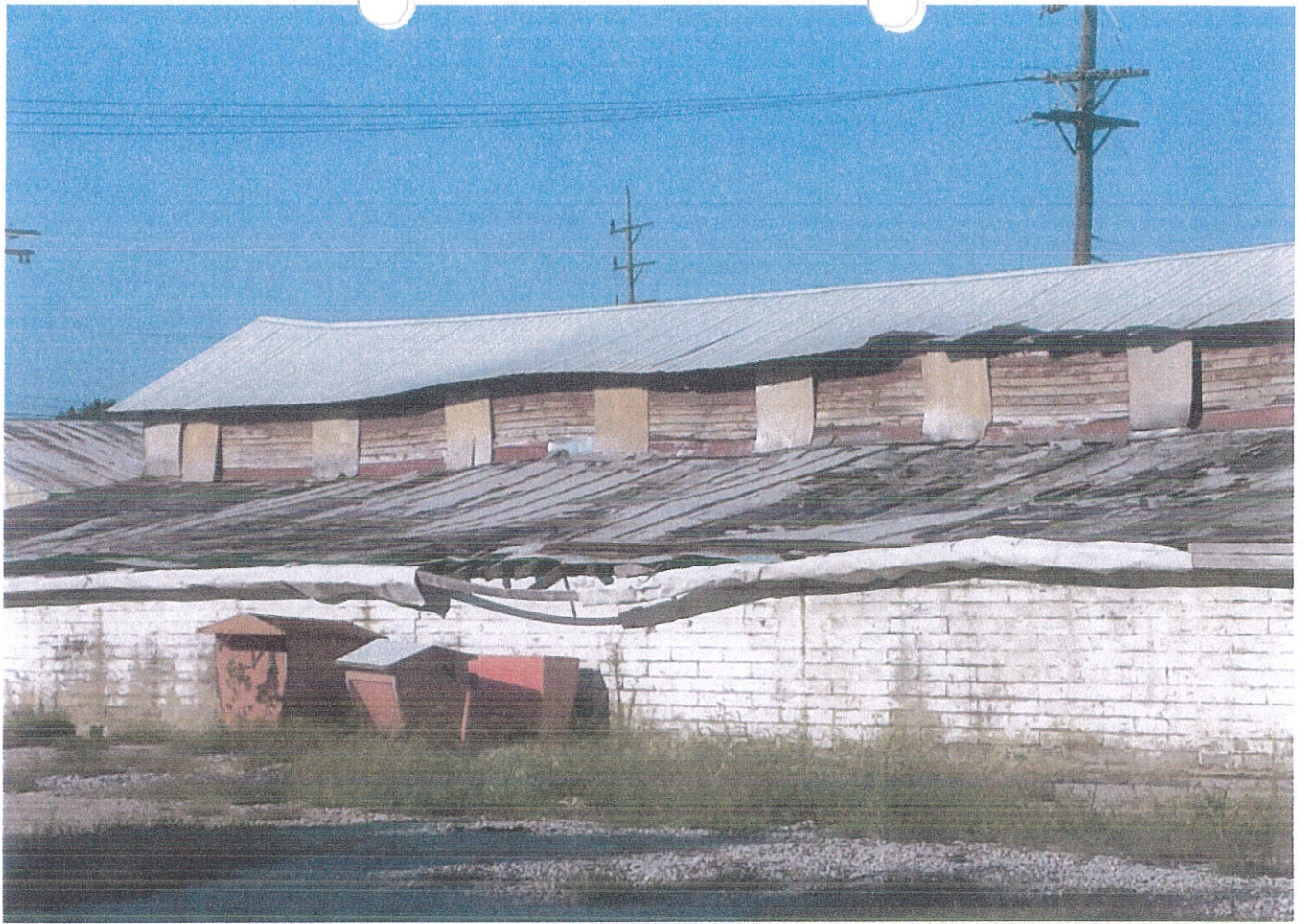
**120 North Perkins Street, Rushville, Indiana 46173**  
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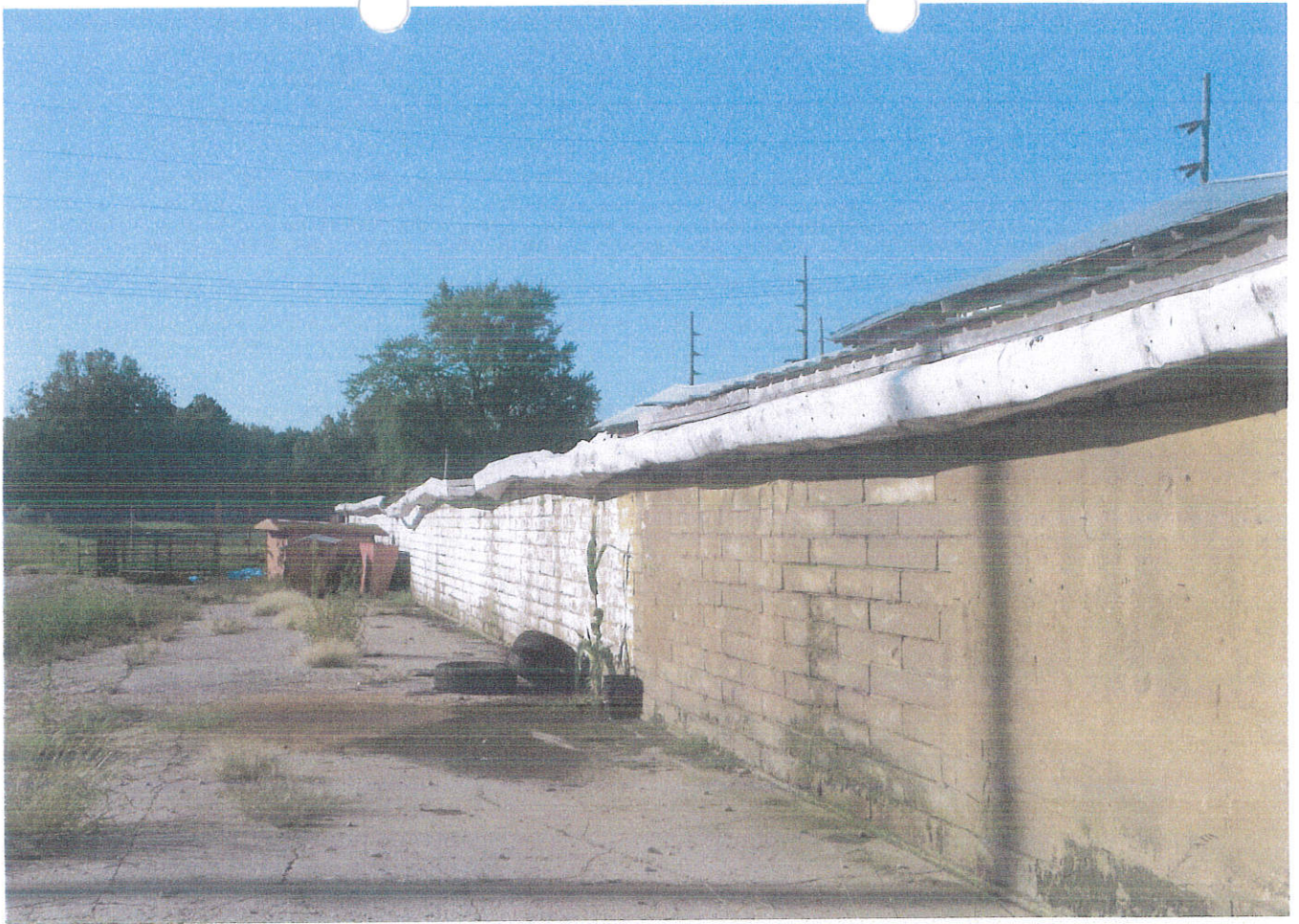
the North west wall. I also found that a wooden support that was no longer touching the concrete floor near the front entrance. The entire roof appears to have a bow in it for the east and west side. The west front portion of the wall appears to be bowed outward toward Julian Street. At the end of our meeting I told Mr. Flynn that I found what I thought was enough evidence that I would request a structural engineer to assess the structure at our cost. I also explained that if Mr. Flynn was not satisfied with the results of our assessment then he could gain his own at his expense. Mr. Flynn stated that he would have to contact his lawyer before allowing any assessment and I stated that was fine. His lawyer could call me or our city attorney.

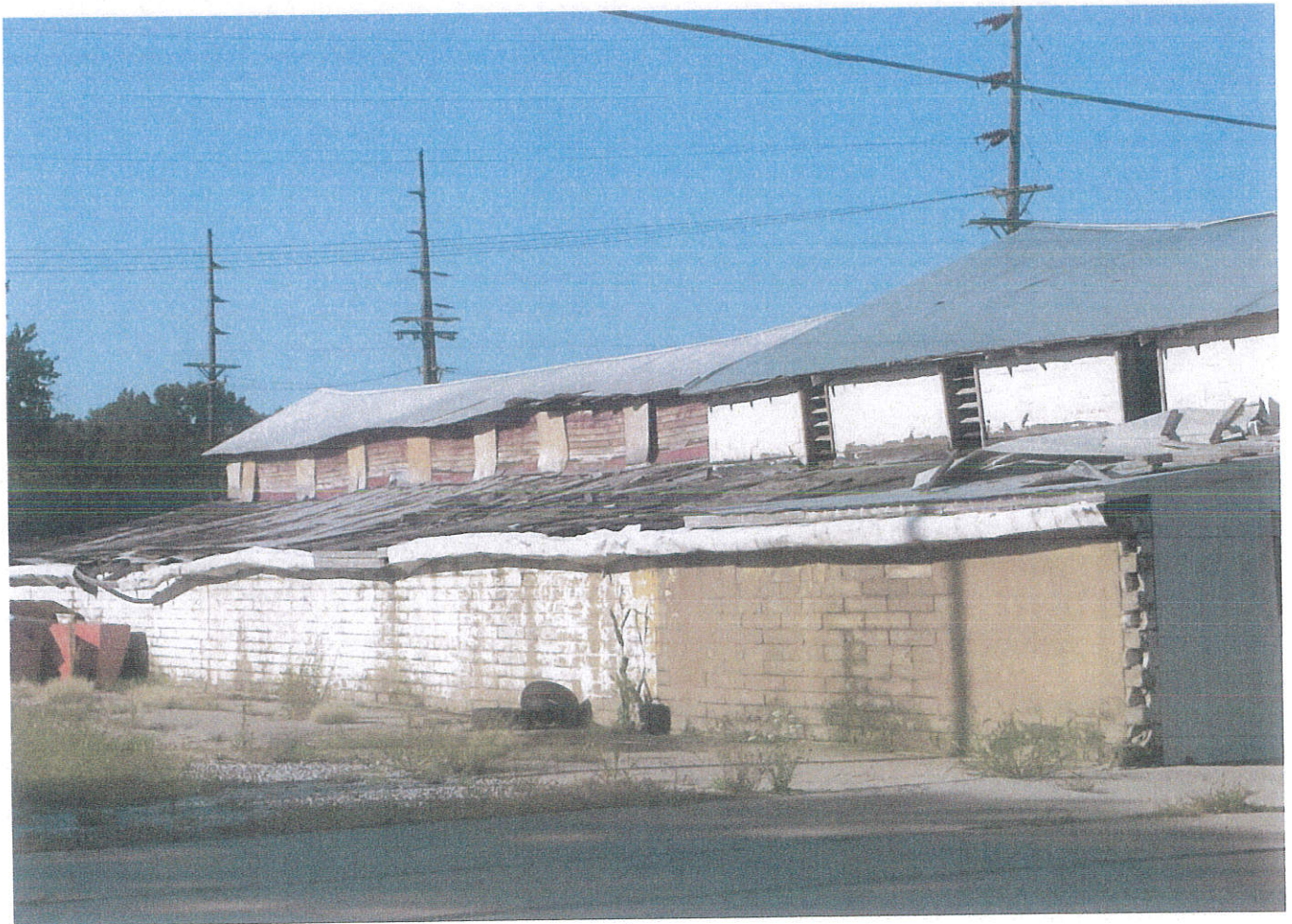
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## CITY OF RUSHVILLE, INDIANA

### Rushville Fire Department

120 North Perkins Street  
Rushville, Indiana 46173

## ORDER

DATE: 01/04/2017  
Charles R. Jenkins, Fire Chief  
Unsafe Buildings Hearing Board  
City of Rushville  
FROM: 120 North Perkins Street  
Rushville, Indiana 46173  
765-938-1519 (firechief@cityofrushville.in.gov)  
Allen R. & Kathy Flynn  
TO: 1695 East 400 South  
New Castle, IN 47362  
RE: 301 E Second St  
Rushville, IN 46173  
CASE NUMBER: CE-16-99

Dear Allen R. & Kathy Flynn,

As an owner of record, or as a person with a substantial property interest in the property referenced above, you are hereby ordered to take the following action(s) with regard to the aforementioned nuisance, to wit:

{{title_here}}	Description	Corrective Action
IC 36-7-9-5 (A) (7) Removal of Structure	Removal of an Unsafe Building	You must remove the structure due to it being deemed unsafe.

This action must be accomplished within ten (10) days after you have received notice.

[ X ] You are entitled to a hearing with regard to this order on a business day no earlier than ten days after notice of the order is given. YOUR HEARING DATE IS HEREBY SET FOR **FEBRUARY 7, 2016 AT 5:00 pm.** THE HEARING SHALL BE HELD AT THE COMMON COUNCIL CHAMBERS LOCATED AT 270 W. 15TH ST., RUSHVILLE, INDIANA. You are entitled to appear at the hearing with or without legal counsel, present evidence, cross-examine opposing witnesses, and present arguments.

[ ] This order become final in 10 days after notice is given, unless a hearing is requested in writing by a person holding a fee interest, life estate interest, or equitable interest of a contract purchaser in the unsafe premises. The request must be delivered to this enforcement authority listed above before the end of the ten-day period.

If this order is not complied with, the Unsafe Building Hearing Board for the City of Rushville, Indiana, may take certain actions. Such actions include, but are not limited to, causing the Order to be performed by City Employees, causing the work to be performed by outside contractors, filing a lien against the property, seeking a judgment against you for the cost of any work performed plus certain other costs permitted by Indiana law, issuing a civil penalty in an amount not to exceed one thousand dollars (\$1000.00).

You are hereby notified that a person who has been issued, and has received, notice of an Order relative to unsafe premises and has not completed that Order, must supply full information regarding the Order to a person who takes or agrees to take, a substantial property interest in the unsafe premises before transferring or agreeing to transfer, that interest. Such person shall, within five days after transferring or agreeing to transfer a substantial property interest in the unsafe premises, supply the Code Compliance Manager listed above with written copies of the full name, address, and telephone number of the person taking substantial property interest in the unsafe premises and the legal instrument under which the transfer or agreement to transfer the substantial property interest is accomplished. You are further notified that, is a judgment is obtained against the Unsafe building Hearing Board, the enforcement authority, or other governmental entity for the failure of that entity to provide notice to persons holding an interest in the unsafe premises in an action taken by the entity under Indiana code 36-7-9 et. seq., a person who failed to comply with these requirements is liable to the entity for the amount of the Judgment if it can be shown that the entity's failure to give notice was the result of that person's failure.

TENDERED TO THE RUSH COUNTY RECORDER FOR FILING ON 01/04/2017.


AFFIDAVIT      ENFORCEMENT AUTHORITY

Comes now the **Rushville Fire Chief, Charles R. Jenkins**, who, having been duly sworn upon his oath, alleges and states as follows:

Service of the Order/Notice, a copy of which is attached hereto, was made to Allen R. & Kathy Flynn on 01/04/2017 by the following:

- ☐ Delivered a copy of the Order or statement personally to \_\_\_\_\_ at the location of \_\_\_\_\_ at time of \_\_\_\_\_.
- ☒ Delivered a copy of the Order or statement via Certified Mail to: Allen and Kathy Flynn, 1695 East 400 South, New Castle, Indiana 47362.
- ☐ Posted a copy of the Order or statement at the dwelling or building for which the Order was issued, to wit: \_\_\_\_\_.

I affirm under penalties of perjury that the foregoing is true to the best of my knowledge and belief.



Charles R. Jenkins, Fire Chief

City of Rushville

Unsafe Building Hearing Board

\*\*\*\*\*

STATE OF INDIANA )

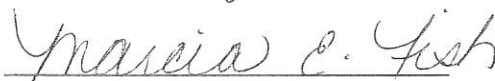
)  
COUNTY OF ~~SPRING~~ **RUSH** )

Subscribed and sworn to before me this 4th day of Jan, 2017.

My Commission Expires:

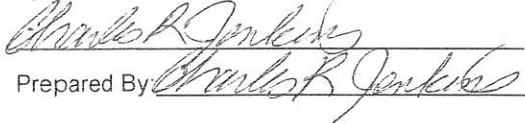
July 4, 2017





MARCIA E. FISH, NOTARY PUBLIC

"I affirm, under the penalties of perjury, that I have taken reasonable care to redact each social security number in this document"



Prepared By Charles R. Jenkins

**CITY OF RUSHVILLE, INDIANA****Rushville Fire Department**

120 North Perkins Street  
Rushville, Indiana 46173

**ORDER****DATE:** 12/05/2016

Charles R. Jenkins, Fire Chief  
Unsafe Buildings Hearing Board

**FROM:** City of Rushville  
120 North Perkins Street  
Rushville, Indiana 46173  
765-938-1519 (firechief@cityofrushville.in.gov)

**TO:** Allen R. & Kathy Flynn  
1695 East 400 South  
New Castle, IN 47362

**RE:** 301 E Second St  
Rushville, IN 46173

**CASE NUMBER:** CE-16-99

Dear Allen R. &amp; Kathy Flynn,

As an owner of record, or as a person with a substantial property interest in the property referenced above, you are hereby ordered to take the following action(s) with regard to the aforementioned property, to wit:

	Description	Corrective Action
Request for Inspection/Right of Entry	The City of Rushville is hereby authorized to perform inspections, collect fees and penalties of the violation included within this ordinance, hold hearings, order or otherwise compel correction of violations of this ordinance, and is otherwise authorized to perform all actions necessary for the administration and enforcement of this ordinance.	I have set a date of December 21, 2016 at 10:00 am for an assessment to be performed by an engineer paid for by the City of Rushville. This assessment is to provide us information on the safety the structure.

[ ] You are entitled to a hearing with regard to this order on a business day no earlier than ten days after notice of the order is given. YOUR HEARING DATE IS HEREBY SET FOR AT . THE HEARING SHALL BE HELD AT THE COMMON COUNCIL CHAMBERS LOCATED AT 270 W. 15TH ST., RUSHVILLE, INDIANA. You are entitled to appear at the hearing with or without legal counsel, present evidence, cross-examine opposing witnesses, and present arguments.

[ ] This order become final in 10 days after notice is given, unless a hearing is requested in writing by a person holding a fee interest, life estate interest, or equitable interest of a contract purchaser in the unsafe premises. The request must be delivered to this enforcement authority listed above before the end of the ten-day period.

If this order is not complied with, the Unsafe Building Hearing Board for the City of Rushville, Indiana, may take certain actions. Such actions include, but are not limited to, causing the Order to be performed by City Employees, causing the work to be performed by outside contractors, filing a lien against the property, seeking a judgment against you for the cost of any work performed plus certain other costs permitted by Indiana law, issuing a civil penalty in an amount not to exceed one thousand dollars (\$1000.00).

You are hereby notified that a person who has been issued, and has received, notice of an Order relative to unsafe premises and has not completed that Order, must supply full information regarding the Order to a person who takes or agrees to take, a substantial property interest in the unsafe premises before transferring or agreeing to transfer, that interest. Such person shall, within five days after transferring or agreeing to transfer a substantial property interest in the unsafe premises, supply the Code Compliance Manager listed above with written copies of the full name, address, and telephone number of the person taking substantial property interest in the unsafe premises and the legal instrument under which the transfer or agreement to transfer the substantial property interest is accomplished. You are further notified that, is a judgment is obtained against the Unsafe building Hearing Board, the enforcement authority, or other governmental entity for the failure of that entity to provide notice to persons holding an interest in the unsafe premises in an action taken by the entity under Indiana code 36-7-9 et. seq., a person who failed to comply with these requirements is liable to the entity for the amount of the Judgment if it can be shown that the entity's failure to give notice was the result of that person's failure.

TENDERED TO THE RUSH COUNTY RECORDER FOR FILING ON 12/05/2016.

AFFIDAVIT ENFORCEMENT AUTHORITY

Comes now the **Rushville Fire Chief, Charles R. Jenkins**, who, having been duly sworn upon his oath, alleges and states as follows:

Service of the Order/Notice, a copy of which is attached hereto, was made to Allen R. & Kathy Flynn on 12/05/2016 by the following:

- ☐ Delivered a copy of the Order or statement personally to \_\_\_\_\_ at the location of \_\_\_\_\_ at time of \_\_\_\_\_.
- ☒ Delivered a copy of the Order or statement via Certified Mail to: Mr. Allen and Kathy Flynn, H&W, 1695 East County Road 400 South, New Castle, Indiana 47362.
- ☐ Posted a copy of the Order or statement at the dwelling or building for which the Order was issued, to wit: \_\_\_\_\_.

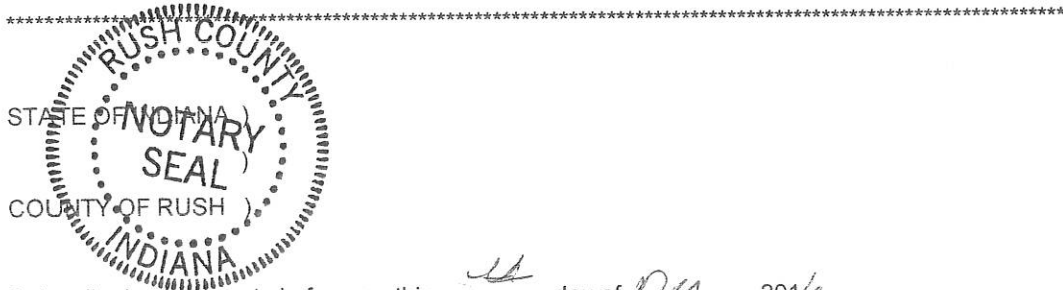
I affirm under penalties of perjury that the foregoing is true to the best of my knowledge and belief.



Charles R. Jenkins, Fire Chief

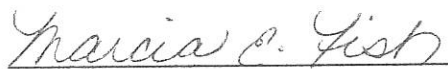
City of Rushville

Unsafe Building Hearing Board



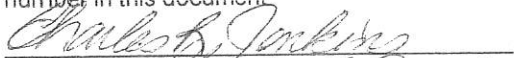
My Commission Expires:

July 8, 2017



MARCIA E. FISH, NOTARY PUBLIC

"I affirm, under the penalties of perjury, that I have taken reasonable care to redact each social security number in this document"



Prepared By 



**City of Rushville**  
**Fire/Rescue Department**  
*Charles R. Jenkins, Chief*  
*Wayne A. Munson, Assistant Chief*

September 8, 2016

Allen and Kathy Flynn, H&W  
1695 East County Road 400 South  
New Castle, Indiana 47362

Dear Mr. and Mrs. Flynn,

I am writing today because I have received a complaint on the structure you own at 301 East Second Street here in Rushville. The complaint pertains to if the structure is structurally sound or is it unsafe and either needs repaired or removed. The City of Rushville has passed the "Minimum Standards for Non-Residential Structures". In accordance with that Ordinance the following is provided:

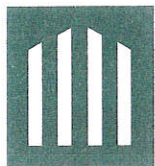
I would like to set a time up with you or your representative to make a visual inspection of the interior of the structure as well as the exterior of the structure for purpose of assessing the safety of the structure. Unfortunately, I will be out of the office beginning September 10, 2016 and will not return until September 19, 2016. I would ask that you please make contact after September 19, 2016 at the number below or by email at [firechief@cityofrushville.in.gov](mailto:firechief@cityofrushville.in.gov) to set up a time that is convenient with you for the assessment of the building.

Thank you in advance for any consideration and cooperation that you may provide in this matter.

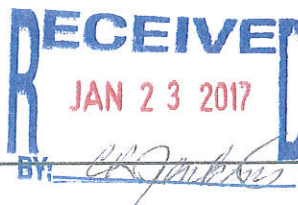
Respectfully,

Charles R. Jenkins  
Fire Chief

120 North Perkins Street, Rushville, Indiana 46173  
Telephone 765-932-3065 Fax 765-938-1406  
[www.cityofrushville.in.gov](http://www.cityofrushville.in.gov)



MCNEELY  
STEPHENSON



ATTORNEYS AT LAW

[www.indianapilaw.com](http://www.indianapilaw.com)

**Brady J. Rife**

(317) 825-5115

[Brady.J.Rife@msth.com](mailto:Brady.J.Rife@msth.com)

*Shelbyville Office*

January 20, 2017

Charles R. Jenkins, Fire Chief  
Unsafe Buildings Hearing Board  
City of Rushville  
120 North Perkins Street  
Rushville, Indiana 46173

Tracy J. Newhouse  
NEWHOUSE & NEWHOUSE  
301 North Main Street  
P. O. Box 128  
Rushville, IN 46173

Re: Case Number: CE-16-99  
301 E. Second Street  
Rushville, IN 46173

Dear Gentlemen:

I am in receipt of the December 22, 2016 structural assessment of Mr. Flynn's property prepared by Mr. Devin M. Cook with TLF, Inc., as well as the January 4, 2017 Order from the Rushville Fire Department ordering Mr. Flynn to remove the livestock building from his property. As you will recall from the Settlement Agreement previously entered into between the City of Rushville, the Rush County Board of Zoning Appeals and R. Allen Flynn and Kathy J. Flynn on April 2, 2015, the parties agreed, in relevant part, as follows:

- 10. At no point in time will the City require Flynn to raze or otherwise alter any structures on the Property beyond ordinary maintenance and upkeep during the Agreed Timeframe, nor shall Flynn be required to raze or otherwise alter any structures on their property after the expiration of the Agreed Timeframe so long as those structures remain locked, secured, reasonably free from unnecessary fire hazards, structurally intact and free from danger of imminent collapse.**

While Mr. Cook's report alleges that the livestock building in its current condition is not safe to occupy, what it fails to allege is that the livestock building is: (1) not structurally intact; or (2) in danger of imminent collapse. Thus, pursuant to the terms and conditions of the Settlement Agreement, any action by the City requiring Mr. Flynn to remove the livestock building from his property constitutes a material breach of the Settlement Agreement by the City.



Charles R. Jenkins  
Tracy J. Newhouse  
January 20, 2017  
Page Two

Furthermore, Mr. Cook's report clearly indicates that "repair and/or replacement to all of the above listed items are required before the building may be considered safe to occupy." Pursuant to Indiana Code § 36-7-9-5(a)(7), the City may only issue an order requiring the demolition and removal of an unsafe building if "the general condition of the building warrants removal; or the building continues to require reinspection and additional abatement action after an initial abatement action was taken pursuant to notice and an order." Nothing in Mr. Cook's report states that the general condition of the livestock building warrants removal. Rather, Mr. Cook's report clearly states that the alleged deficiencies observed by him are capable of being repaired and/or replaced. Thus, the City may not order Mr. Flynn to remove the building pursuant to Indiana Code § 36-7-9-5(a)(7) as there is no evidence that the general condition of the building warrants removal. Any action by the City requiring Mr. Flynn to remove the building would be outside the scope of authority granted to it by Indiana law.

Therefore, because Mr. Flynn's building is structurally intact, is free from the danger of imminent collapse and its general condition does not warrant removal, any action by the City requiring Mr. Flynn to remove the building, or any action by the City itself to remove the building, would not only be a breach of the terms and conditions of the Settlement Agreement but would also be outside the scope of authority granted to it by Indiana law.

If you wish to discuss these matters in greater detail, please feel free to contact me. I look forward to seeing you all at the February 7, 2017 hearing.

Very truly yours,

McNEELY STEPHENSON

Brady J. Rife

BJR:rrs